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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES JOHN McBRIDE,  
12 CDCR #V-43592,

13 Plaintiff,

14  
15 vs.  
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17 D. SERVANTES, Correctional Sergeant;  
18 A. VANDERLIPE, Correctional Officer;  
19 E. SANDOVAL, Correctional Officer;  
20 E. IHEANACHO, Correctional Officer;  
21 G. CASIAN, Doctor;  
22 K. CHALLAKERE, Doctor;  
23 D. ONATE, Registered Nurse,

24 Defendants.  
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Civil No. 15cv2445 LAB (JLB)

**ORDER:**

**1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)  
[ECF Doc. No. 2]**

**AND**

**2) DIRECTING U.S. MARSHAL  
TO EFFECT SERVICE OF  
SUMMONS AND COMPLAINT  
PURSUANT TO  
28 U.S.C. § 1915(d) AND  
FED. R. CIV. P. 4(c)(3)**

24 James John McBride ("Plaintiff"), currently incarcerated at California State  
25 Prison, Los Angeles County ("CSP-LAC") in Lancaster, California, and proceeding  
26 pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983  
27 (ECF Doc. No. 1).

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1 Plaintiff claims four Richard J. Donovan Correctional Facility (“RJD”)   
 2 correctional officials and three RJD medical officials violated his Eighth Amendment   
 3 rights in August 2015 by using excessive force, sexually assaulting him, and   
 4 “administer[ing] multiple injections of drugs into [his] body against [his] will.” *See*   
 5 Compl. at 4-5. Plaintiff seeks injunctive relief preventing “reprisals in any form,” a   
 6 trial by jury and \$109 million in general and punitive damages. *Id.* at 9.

7 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a)   
 8 when he filed his Complaint; instead, he filed a Motion to Proceed *In Forma*   
 9 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

#### 10 **I. Plaintiff’s Motion to Proceed IFP**

11 All parties instituting any civil action, suit or proceeding in a district court of   
 12 the United States, except an application for writ of habeas corpus, must pay a filing   
 13 fee of \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s   
 14 failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to   
 15 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);   
 16 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is   
 17 granted leave to proceed IFP remains obligated to pay the entire fee in “increments”   
 18 or “installments,” *Bruce v. Samuels*, \_\_ S. Ct. \_\_, 2016 WL 112684 at \*3 (U.S. Jan.   
 19 12, 2016) (No. 14-844); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),   
 20 and regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.   
 21 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

22 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act   
 23 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of   
 24 [his] trust fund account statement (or institutional equivalent) for . . . the six-month   
 25 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2);   
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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional   
 28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of   
 Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50   
 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust  
2 account statement, the Court assesses an initial payment of 20% of (a) the average  
3 monthly deposits in the account for the past six months, or (b) the average monthly  
4 balance in the account for the past six months, whichever is greater, unless the  
5 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The  
6 institution having custody of the prisoner then collects subsequent payments, assessed  
7 at 20% of the preceding month's income, in any month in which his account exceeds  
8 \$10, and forwards those payments to the Court until the entire filing fee is paid. *See*  
9 28 U.S.C. § 1915(b)(2).

10 In support of his IFP Motion, Plaintiff submitted a certified copy of his trust  
11 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2 (ECF  
12 Doc. No. 2 at 5-8). *Andrews*, 398 F.3d at 1119. Plaintiff's statement shows that he has  
13 had no deposits, carried no balance during the 6-month period preceding the filing of  
14 this action, and had no available money on the books at the time of filing. *See* 28  
15 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from  
16 bringing a civil action or appealing a civil action or criminal judgment for the reason  
17 that the prisoner has no assets and no means by which to pay the initial partial filing  
18 fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-  
19 valve" preventing dismissal of a prisoner's IFP case based solely on a "failure to pay  
20 . . . due to the lack of funds available to him when payment is ordered.").

21 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (ECF No.  
22 No. 2), and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However,  
23 the entire \$350 balance of the filing fees due for this case must be collected by the  
24 California Department of Corrections and Rehabilitation ("CDCR") and forwarded to  
25 the Clerk of the Court pursuant to the installment payment provisions set forth in 28  
26 U.S.C. § 1915(b)(1).

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## 1 **II. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

2 Notwithstanding Plaintiff's IFP status or the payment of any filing fees, the  
 3 PLRA also requires the Court to review complaints filed by all persons proceeding  
 4 IFP and by those, like Plaintiff, who are "incarcerated or detained in any facility [and]  
 5 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or  
 6 the terms or conditions of parole, probation, pretrial release, or diversionary  
 7 program," "as soon as practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2) and  
 8 1915A(b). Under these statutes, the Court must sua sponte dismiss any complaint, or  
 9 any portion of a complaint, which is frivolous, malicious, fails to state a claim, or  
 10 seeks damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and  
 11 1915A(b); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
 12 (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing  
 13 28 U.S.C. § 1915A(b)).

14 All complaints must contain "a short and plain statement of the claim showing  
 15 that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Detailed factual  
 16 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of  
 17 action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*,  
 18 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
 19 (2007)). "Determining whether a complaint states a plausible claim for relief [is] . . . a  
 20 context-specific task that requires the reviewing court to draw on its judicial  
 21 experience and common sense." *Id.* The "mere possibility of misconduct" falls short  
 22 of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572  
 23 F.3d 962, 969 (9th Cir. 2009).

24 "When there are well-pleaded factual allegations, a court should assume their  
 25 veracity, and then determine whether they plausibly give rise to an entitlement to  
 26 relief." *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir.  
 27 2000) ("[W]hen determining whether a complaint states a claim, a court must accept  
 28 as true all allegations of material fact and must construe those facts in the light most

1 favorable to the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.  
 2 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil  
 3 Procedure 12(b)(6)”).

4 However, while the court “ha[s] an obligation where the petitioner is pro se,  
 5 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
 6 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
 7 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
 8 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*  
 9 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

10 As currently pled, the Court finds Plaintiff’s Complaint contains excessive  
 11 force and medical care claims sufficient to overcome the “low threshold” for  
 12 surviving the initial sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and  
 13 1915A(b).<sup>2</sup> See Compl., ECF Doc. No. 1, at 4-5; *Wilhelm v. Rotman*, 680 F.3d 1113,  
 14 1123 (9th Cir. 2012); see also *Hudson v. McMillian*, 503 U.S. 1, 6 (1992) (to violate  
 15 the Eighth Amendment, plaintiff must allege that an official applied force  
 16 “maliciously and sadistically for the very purpose of causing harm.”); *Washington v.*  
 17 *Harper*, 494 U.S. 210, 221-22 (1990) (recognizing prisoner’s protected liberty  
 18 interest in refusing medical treatment under certain circumstances).

19 Accordingly, the Court will direct the U.S. Marshal to effect service on  
 20 Plaintiff’s behalf. See 28 U.S.C. § 1915(d) (“The officers of the court shall issue and  
 21 serve all process, and perform all duties in [IFP] cases.”); FED. R. CIV. P. 4(c)(3)  
 22 (“[T]he court may order that service be made by a United States marshal or deputy  
 23 marshal . . . if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C.  
 24 § 1915.”).

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27 <sup>2</sup> Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is  
 28 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a  
 defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.  
 Cal. 2007).

1 **III. Conclusion and Orders**

2 Good cause appearing, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C.  
4 § 1915(a) (ECF Doc. No. 2).

5 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from  
6 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing  
7 monthly payments from his account in an amount equal to twenty percent (20%) of  
8 the preceding month's income and forwarding those payments to the Clerk of the  
9 Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C.

10 § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE  
11 NAME AND NUMBER ASSIGNED TO THIS ACTION.

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott  
13 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

14 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint  
15 (ECF Doc. No. 1) upon Defendants and forward it to Plaintiff along with blank U.S.  
16 Marshal Form 285 for each Defendant. In addition, the Clerk will provide Plaintiff  
17 with a certified copy of this Order, a certified copy of his Complaint (ECF Doc. No.  
18 1), and the summons so that he may serve each Defendant. Upon receipt of this "IFP  
19 Package," Plaintiff must complete the Form 285s as completely and accurately as  
20 possible for each Defendant, and return them to the United States Marshal according  
21 to the instructions the Clerk provides in the letter accompanying his IFP package.

22 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and  
23 summons upon Defendants as directed by Plaintiff on the USM Form 285s provided  
24 to him. All costs of that service will be advanced by the United States. *See* 28 U.S.C.  
25 § 1915(d); FED. R. CIV. P. 4(c)(3).

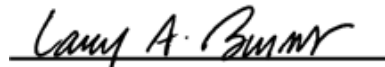
26 6. **ORDERS** Defendants to reply to Plaintiff's Complaint within the time  
27 provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See*  
28 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to "waive

1 the right to reply to any action brought by a prisoner confined in any jail, prison, or  
2 other correctional facility under section 1983,” once the Court has conducted its sua  
3 sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has  
4 made a preliminary determination based on the face on the pleading alone that  
5 Plaintiff has a “reasonable opportunity to prevail on the merits,” the defendant is  
6 required to respond).

7       7.       **ORDERS** Plaintiff to serve upon Defendants or, if an appearance has  
8 been entered by counsel, upon Defendants’ counsel, a copy of every further pleading  
9 or other document he wishes the Court to consider. Plaintiff must include with the  
10 original paper to be filed with the Clerk of the Court, a certificate stating the manner  
11 in which a true and correct copy of the document was served on Defendants, or  
12 counsel for Defendants, and the date of that service. Any paper received by the Court  
13 which has not been properly filed with the Clerk, or which fails to include a  
14 Certificate of Service, may be disregarded.

15       **IT IS SO ORDERED.**

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17 DATED: February 16, 2016

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19 **HONORABLE LARRY ALAN BURNS**  
20 United States District Judge  
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